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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 TITO BARRON-AGUILAR,

Case No. 3:17-cv-00548-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 HAROLD WICKHAM, *et al.*,

13 Respondents.

14 Following upon entries of appearance (ECF Nos. 8 and 9) by the Federal Public  
15 Defender, it is ordered that the Federal Public Defender, through C.B. Kirschner, Esq.,  
16 *vice* Megan C. Hoffman, Esq., is appointed as counsel for petitioner pursuant to 18 U.S.C.  
17 § 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to  
18 this matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

19 It further is ordered that petitioner will have until up to and including May 7, 2018,  
20 within which to file an amended petition and/or seek other appropriate relief.<sup>1</sup> Neither the  
21 foregoing deadline nor any extension thereof signifies or will signify any implied finding  
22 as to the expiration of the federal limitation period and/or of a basis for tolling during the  
23 time period established. Petitioner at all times remains responsible for calculating the  
24 running of the federal limitation period and timely asserting claims, without regard to any  
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26 <sup>1</sup>Petitioner additionally may move to invoke a “two-step” amendment procedure to  
27 limit the number of claims potentially reliant upon relation back to overcome potential  
28 limitations issues if investigation cannot be completed in advance of the putative  
expiration of the federal limitation period. See, e.g., *Harsh v. Gentry*, No. 2:17-cv-02069-  
MMD-NJK, ECF No. 15 (D. Nev., Nov. 16, 2017).

1 deadlines established or extensions granted herein. That is, by setting a deadline to  
2 amend the petition and/or by granting any extension thereof, the Court makes no finding  
3 or representation that the petition, any amendments thereto, and/or any claims contained  
4 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235  
5 (9th Cir. 2013).

6 It further is ordered that respondents will file a response to the amended petition,  
7 including potentially by motion to dismiss, within sixty (60) days of service of an amended  
8 petition and that petitioner may file a reply within thirty (30) days of service of an answer.  
9 The response and reply time to any motion filed by either party, including a motion filed  
10 in lieu of a pleading, will be governed instead by Local Rule LR 7-2(b).

11 It further is ordered that any procedural defenses raised by respondents to the  
12 counseled amended petition must be raised together in a single consolidated motion to  
13 dismiss. In other words, the Court does not wish to address any procedural defenses  
14 raised herein either in *seriatum* fashion in multiple successive motions to dismiss or  
15 embedded in the answer. Procedural defenses omitted from such motion to dismiss will  
16 be subject to potential waiver. Respondents will not file a response in this case that  
17 consolidates their procedural defenses, if any, with their response on the merits, except  
18 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
19 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall  
20 do so within the single motion to dismiss not in the answer; and (b) they shall specifically  
21 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*  
22 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,  
23 including exhaustion, will be included with the merits in an answer. All procedural  
24 defenses, including exhaustion, instead must be raised by motion to dismiss.


25 It further is ordered that, in any answer filed on the merits, respondents must  
26 specifically cite to and address the applicable state court written decision and state court  
27 record materials, if any, regarding each claim within the response as to that claim.

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1           It further is ordered that any state court record and related exhibits filed herein by  
2 either petitioner or respondents must be filed with a separate index of exhibits identifying  
3 the exhibits by number. The CM/ECF attachments that are filed further must be identified  
4 by the number or numbers of the exhibits in the attachment. If the exhibits filed will span  
5 more than one ECF Number in the record, the first document under each successive ECF  
6 Number must be either another copy of the index, a volume cover page, or some other  
7 document serving as a filler, so that each exhibit under the ECF Number thereafter will  
8 be listed under an attachment number (*i.e.*, Attachment 1, 2, etc.).

9           It further is ordered that the hard copy of any exhibits filed by either counsel must  
10 be delivered — for this case — to the Reno Clerk's Office.

11           DATED THIS 25<sup>th</sup> day of January 2018.

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15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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